Filed 12/15/08 In re Roberto A. CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ROBERTO A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ROBERTO A., Defendant and Appellant.	D051886 (Super. Ct. No. JJL23811)

APPEAL from a judgment of the Superior Court of Imperial County, Poli Flores, Jr., Commissioner. Affirmed.

The juvenile court declared 17-year-old Roberto A. a ward of the court (Welf. & Inst. Code, § 602) after sustaining allegations that he committed robbery and commercial burglary. The court ordered Roberto to serve 72 days in Juvenile Hall, gave him 72 days of credit for time served, and placed him on probation.

Roberto appeals, contending the court erred by denying his motion to suppress statements he made to police officers before he had been advised of his rights under *Miranda v. Arizona* (*Miranda*) (l966) 384 U.S. 436.

FACTS

On July 25, 2007, a Carl's Jr. restaurant in El Centro was robbed 10 minutes before closing time. A male whose face was covered by a bandana with eye slits jumped over the counter and demanded employees open the cash register. The employees believed the robber could be armed because he had his hands in his pockets. Dorodeo Zamora, the shift leader, directed employee Jorge Ramirez to open the register. The robber took $280 in cash. The robber stood on top of the counter, took a stick, which was 12 to 18 inches in length, out of his pocket and waved it at the employees. Then, the robber ran away. Ramirez called police.

El Centro Police Officer Luis Hernandez was one of the officers who responded to the call. After restaurant employees described the robber as a black male, wearing a Dickies brand jacket, Hernandez searched the area in his patrol car. Hernandez saw Roberto and planned to ask him if he had seen the robbery suspect. As Hernandez started to get out of his patrol car, Roberto looked at the officer and started running away. At that point, the officer noticed that Roberto was wearing dark clothing, which matched the description provided by Zamora and Ramirez. Hernandez pursued Roberto in his patrol car with the overhead lights activated. While Roberto was running on Aurora Drive, Hernandez rolled down the passenger side window and ordered him to stop. Roberto complied.

After getting out of his patrol car, Hernandez ordered Roberto to lie facedown on the ground; Roberto complied. Hernandez then handcuffed Roberto because he had been told that the robber had a weapon; the officer wanted to be sure that Roberto was not armed. Hernandez then asked Roberto why he had run. Roberto replied that he "got caught up at Carl's Jr."[1] Roberto asked how much time the officer thought he would get, specifically mentioning two or three months. Hernandez replied that Roberto should not "worry about that right now because he wasn't under arrest . . . he was only being detained." Hernandez also asked Roberto what he had done with the money. Roberto responded that he had dropped the money as he was running. At that point, both Roberto and the officer were standing in front of the patrol car; Roberto was still handcuffed.

Hernandez did not advise Roberto of his rights under *Miranda*.

Later that evening, police drove Zamora to Roberto's location where he identified Roberto as the robber. Police then arrested Roberto. Zamora also identified Roberto as the robber at the jurisdictional hearing.

Roberto's counsel moved in limine to suppress Roberto's statements to Hernandez. The juvenile court denied the motion.

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1 Hernandez testified that "caught up" was a slang term, meaning "involved in something."

DISCUSSION

Roberto contends that his statement to Officer Hernandez was taken in violation of *Miranda*, *supra*, 384 U.S. 436, because he was subjected to custodial interrogation without being given his *Miranda* warnings. We disagree.

It is settled law that a defendant's statements are inadmissible if they stem from a custodial interrogation unless the defendant was first advised of his or her *Miranda* rights. (See *Berkemer v. McCarty* (1984) 468 U.S. 420, 428-429.)[2] Likewise, statements obtained from minors in violation of *Miranda* are inadmissible in juvenile proceedings held pursuant to Welfare and Institutions Code section 602. (*In re Roderick P.* (1972) 7 Cal.3d 801, 810-811.) The hallmark of custodial interrogation is " 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' " (*Berkemer v. McCarty*, *supra*, 468 U.S. at p. 428.) Interrogation in this context is defined as "any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response." (*People v. Mosley* (1999) 73 Cal.App.4th 1081, 1089.)

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2 Under *Miranda*, the defendant must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." (*Miranda*, *supra*, 384 U.S. at p. 444.) This "prophylactic" rule of *Miranda* is designed to insure the Fifth Amendment right against compulsory self-incrimination is protected. (*Michigan v. Tucker* (1974) 417 U.S. 433, 444, 446.)

The existence or absence of custody is based upon an inquiry into "whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125, quoting *Oregon v. Mathiason* (1977) 429 U.S. 492, 495.) The issue of whether the person is "in custody," "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." (*Stansbury v. California* (1994) 511 U.S. 318, 323.) The determinative factor is how a reasonable person in the suspect's position would have understood his situation. (*Berkemer v. McCarty*, *supra,* 468 U.S. at p. 442.)

Factors relevant in determining whether an interrogation is custodial are:

> "[W]hether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; whether there were restrictions on the person's freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation." (*People v. Aguilera* (*Aguilera*) (1996) 51 Cal.App.4th 1151, 1162.)

"[C]ourts [also] consider highly significant whether the questioning was brief, polite, and courteous or lengthy, aggressive, confrontational, threatening, intimidating, and accusatory." (*Id*. at p. 1164.) "No one factor is dispositive." (*Id*. at p. 1162.)

In making an objective assessment of the custody issue for purposes of *Miranda*, the linchpin is whether a reasonable person in the particular circumstances would feel that his freedom of movement has been restricted to the degree associated with formal arrest. (*Yarborough v. Alvarado* (2004) 541 U.S. 652; *Berkemer v. McCarthy*, *supra*, 468 U.S. at p. 440; *California v. Beheler*, *supra*, 463 U.S. at p. 1125.) Individual characteristics of the suspect, such as his age and experience with law enforcement, are not relevant to this objective test. (*Yarborough v. Alvarado*, *supra*, 541 U.S. at p. 668.) Since the passage of Proposition 8 in 1982, the federal standard must be applied to *Miranda* issues. (*In re Lance W.* (1985) 37 Cal.3d 873, 896; see Cal. Const., art. I, § 28(d).)

"[P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. . . . *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' " (*Oregon v. Mathiason*, *supra*, 429 U.S. at p. 495.) *Miranda* warnings are not required when a person is temporarily detained. (*People v. Farnam* (2002) 28 Cal.4th 107, 180.) "[T]he term 'custody' generally does not include 'a temporary detention for investigation' where an officer detains a person to ask a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." (*Ibid*., quoting *People v. Clair* (1992) 2 Cal.4th 629, 679-680; see also *Miranda*, *supra*,

384 U.S. at p. 477 ["General on-the-scene questioning as to facts surrounding a crime . . . is not affected by our holding."].)

We apply the following standard of appellate review: The determination of whether a suspect is in custody for purposes of *Miranda* is a mixed question of law and fact. As to the factual circumstances of the interrogation, we review the juvenile court's findings under the deferential substantial evidence standard. As to the issue of whether a reasonable person under those circumstances would have felt his freedom of movement was restricted to the degree associated with formal arrest, we review the issue de novo. (See *People v. Ochoa* (1998) 19 Cal.4th 353, 401-402.)

We acknowledge that a number of aspects of Roberto's encounter with Officer Hernandez suggest it might have been custodial in nature. Hernandez initiated the contact, not Roberto. There is no evidence Roberto voluntarily agreed to the interview; rather, after Roberto complied with Hernandez's direction to stop running, the officer ordered Roberto to lie face down and then handcuffed him. Thus, Roberto's movement was restricted. Also, Hernandez did not specifically inform Roberto that he was free to terminate the interview and leave at any time. These factors point to the interview as custodial.

However, there are several factors identified in *Aguilera* which support the opposite conclusion—namely, that the interrogation was noncustodial. The setting of the interrogation—on the street—was a less coercive environment than a police station. Hernandez was the only officer present, and he did not draw his gun. Although Hernandez handcuffed Roberto he did not place him in the patrol car. The record

contains no indication that Hernandez was accusatory or confrontational in his examination of Roberto. Hernandez did not tell Roberto that he had information tying him to the crime. The officer's first question was not related to the robbery at Carl's Jr.; Hernandez asked Roberto why he was running. The officer told Roberto that he was not under arrest, but rather merely detained. The interview was quite short.

We realize that handcuffing is one of the indicia of arrest, but it is not dispositive here. The fact Roberto was placed in handcuffs does not by itself show that he had been arrested or was in custody for purposes of *Miranda*. (See *People v. Celis* (2004) 33 Cal.4th 667, 676.)[3] For example, in *People v. Clair*, *supra*, 2 Cal.4th at page 679, our Supreme Court upheld a finding of no custody when an officer, with his gun drawn, approached the defendant at an apartment crime scene to ask who he was, whether he had identification and was living in the apartment, what he was doing in the apartment and whether he knew the residents. Hernandez did not point a gun at Roberto; his handcuffing of Roberto was no more coercive than that present in *People v. Clair*, *supra*, 2 Cal.4th 629. Moreover, *Miranda*, *supra*, 384 U.S. at pages 477 to 478 was more concerned about "techniques of persuasion" that "reflect a measure of compulsion," such as line-ups and psychological ploys, not basic police actions, such as handcuffing. (*Rhode Island v. Innis* (1980) 446 U.S. 291, 299-300.) As *Aguilera*, *supra*, 51

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3 Hernandez had been told the Carl's Jr. robber was armed; under these circumstances, the officer was justified in conducting a *Terry* (*Terry v. Ohio* (1968) 392 U.S. 1, 24) stop and pat down for safety purposes.

Cal.App.4th at page 1162, teaches, no one circumstance is determinative. "Rather, we look at the interplay and combined effect of all the circumstances to determine whether on balance they created a coercive atmosphere such that a reasonable person would have experienced a restraint tantamount to an arrest." (*Ibid*.)

After weighing the *Aguilera* factors, we conclude Roberto was not in custody as defined for purposes of *Miranda*. Roberto started running away when he first saw the officer. When Hernandez caught up with Roberto, the officer detained him for investigative purposes. An individual's "flight from police is a proper consideration . . . in determining whether . . . the police have sufficient cause to detain." (*People v. Souza* (1994) 9 Cal.4th 224, 235.) Hernandez's first question—why Roberto ran—was not linked to the Carl's Jr. robbery and was not posed to elicit an incriminating statement about the robbery. Hernandez's questioning was no more than the general on-the-scene inquiry of a preliminary investigation. Mere detention for investigative purposes is not custody requiring the giving of *Miranda* warnings before questioning of a suspect. (*Berkemer v. McCarthy*, *supra*, 468 U.S. at p. 440.)

Roberto responded to the officer's general question with the incriminating statement that he "got caught up at Carl's Jr." Then Roberto, without any prodding by Hernandez, spontaneously asked the officer about the likely punishment. When an individual is detained and voluntarily makes spontaneous statements not in response to police questions or conduct, those statements are admissible. (See *Miranda*, *supra*, 384 U.S. at p. 478 ["Any statement given freely and voluntarily without any compelling

influences is . . . admissible in evidence."].) A police officer is not obligated to prevent a suspect from volunteering incriminating statements. (*People v. Edwards* (1991) 54 Cal.3d 787, 815-816.) Up to this point, *Miranda* requirements had not been implicated; there was neither custody nor interrogation. Roberto was being detained, and Hernandez had not asked any questions that he should have known were likely to elicit an incriminating response.

The question remains whether Hernandez's next question—what did Roberto do with the money—implicated *Miranda*, *supra*, 384 U.S. 436. This question clearly constituted interrogation within the meaning of *Miranda*—Hernandez should have known it was likely to elicit an incriminating response from Roberto.

Assuming arguendo that Hernandez should not have posed his second question without first giving a *Miranda* warning, any error was harmless. We conclude that even if Roberto's incriminating statement that he had dropped the money while running was obtained in violation of *Miranda*, its admission was harmless beyond a reasonable doubt. (*People v. Cunningham* (2001) 25 Cal.4th 926, 994 [claims of *Miranda* error are reviewed under harmless error standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 24; *Arizona v. Fulminante* (1991) 499 U.S. 279, 309 [admission of confession obtained in violation of *Miranda* is subject to harmless error review].)

To find admission of Roberto's statement harmless, we must conclude that there is no reasonable possibility that the error contributed to the true finding. (*Arizona v. Fulminante*, *supra*, 499 U.S. at p. 310.) An error does not contribute to a guilty verdict or true finding when it is "unimportant in relation to everything else the jury considered on

the issue in question, as revealed in the record." (*Yates v. Evatt* (1991) 500 U.S. 391, 403, disapproved on other grounds in *Estelle v. McGuire* (1991) 502 U.S. 62, 72, fn. 4.) "Thus, the focus is what the [fact finder] actually decided and whether the error might have tainted its decision. That is to say, the issue is 'whether the . . . [true finding] actually rendered in this trial was surely unattributable to the error.' " (*People v. Neal* (2003) 31 Cal.4th 63, 86, quoting *Sullivan v. Louisiana* (1993) 508 U.S. 275, 279, italics omitted.)

The evidence against Roberto was strong. Zamora, the Carl's Jr.'s shift leader, identified him as the robber. Roberto volunteered to Officer Hernandez that he ran because he "was caught up" or involved at Carl's Jr., which had just been robbed. Then Roberto spontaneously asked the officer about his expected punishment. Moreover, Roberto was wearing clothes similar to those worn by the robber. Even in the absence of Roberto's incriminating admission that he had dropped the money while he was running, the evidence overwhelmingly supported the true finding that Roberto robbed the Carl's Jr. restaurant. Therefore, the admission of Roberto's incriminating statement that he dropped the money while he was running was harmless beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.